

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ANNIE MAY)	
Claimant)	
VS.)	
)	
THE UNIVERSITY OF KANSAS)	Docket No. 135,577
Respondent)	
AND)	
)	
STATE SELF-INSURANCE FUND)	
Insurance Carrier)	

ORDER

Both claimant and respondent appeal the Order entered by Administrative Law Judge Floyd V. Palmer on July 22, 1996. The Appeals Board heard oral argument in Topeka, Kansas, on February 4, 1997.

APPEARANCES

Claimant appeared by her attorney, Chris Miller of Lawrence, Kansas. Respondent and its insurance carrier appeared by their attorney, Roy T. Artman of Topeka, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record consists of the documents filed of record with the Division of Workers Compensation, including the transcript of the Motion Hearing held on July 17, 1996, and exhibits attached thereto.

ISSUES

The Administrative Law Judge in the Order dated July 22, 1996, which is the subject of this appeal, ordered the respondent to pay the attorney for the claimant for attorney fees and expenses in the amount of \$538.51. Both parties appealed that Order. Claimant claims the Administrative Law Judge erred in awarding attorney fees and expenses in the amount of \$538.51 instead of the requested \$4,580.51. Conversely, the respondent claims that claimant's attorney is not entitled, under these facts and circumstances, to an award of attorney fees and expenses.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and hearing the arguments of the parties, the Appeals Board finds as follows:

As a preliminary matter, the Appeals Board finds the Order of Administrative Law Judge Floyd V. Palmer awarding attorney fees pursuant to K.S.A. 44-536(g) is a final order subject to review by the Appeals Board pursuant to K.S.A. 1996 Supp. 44-551(b)(1). See Bell v. The Boeing Company, Docket No. 131,236 (Sept. 1994).

This request for attorney fees and expenses came on before the Administrative Law Judge by a motion filed by the claimant pursuant to K.S.A. 44-536(g). The claimant requested the Administrative Law Judge to order respondent to pay claimant's attorney, Chris Miller, fees and expenses for services rendered on claimant's behalf from March 1, 1991, through July 12, 1996, in the total amount of \$4,580.51.

An Award, agreed to by the parties, was entered in this matter by Administrative Law Judge Floyd V. Palmer on February 6, 1991. The award provided claimant with weekly permanent partial general disability benefits and, among other things, future reasonable and necessary medical treatment for claimant's injuries. Claimant's attorney has admitted a comprehensive itemized accounting of services he and his office staff performed in receiving medical bills from claimant and forwarding such medical bills to the respondent for payment. There is absolutely no evidence in the record that the medical bills submitted to the respondent were not paid as required by the Award of the Administrative Law Judge. Furthermore, there is no evidence in the record indicating the necessity of the claimant to file a demand for payment of the medical bills pursuant to K.S.A. 44-512a. Nevertheless, claimant contends her attorney is entitled to reasonable attorney fees and expenses pursuant to K.S.A. 44-536(g) which provides as follows:

"In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, **or otherwise**, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original claim, and such attorney fees shall

be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis. If the services rendered under this subsection by an attorney result in an additional award of compensation, the attorney fees shall be paid from such amounts of compensation. If such services involve no additional award of compensation, the director shall fix the proper amount of such attorney's fees in accordance with this subsection and such fees shall be paid by the employer or the workers compensation fund, if the fund is liable for compensation pursuant to K.S.A. 44-567 and amendments thereto, to the extent of the liability of the fund." (Emphasis added.)

Claimant argues an award of attorney fees in a post-award matter is not limited to matters that require litigation before the Administrative Law Judge. The claimant asserts the words "or otherwise" provide for an award of reasonable attorney fees for all services provided other than for post-award requests for either review and modification or additional medical benefits. The Administrative Law Judge agreed with the claimant that in certain circumstances claimant is entitled to an award of attorney fees pursuant to K.S.A. 44-536(g) that are not otherwise in connection with an application for review and modification or a hearing for additional medical benefits. In that regard, the Administrative Law Judge awarded claimant attorney fees and expenses in this matter in the amount of \$538.51. However, the Administrative Law Judge rejected the majority of claimant's request for attorney fees and expenses of \$4,580.51 as excessive.

The Appeals Board also agrees that an attorney representing a claimant in a post-award matter is entitled to reasonable attorney fees and expenses in certain circumstances not otherwise connected with an application for review and modification or a hearing for additional medical benefits. See Simmons v. Sim Park Golf Course, Docket No. 186,887 (Jan. 1997). However, the Appeals Board disagrees that claimant's attorney is entitled to attorney fees and expenses under the facts and circumstances presented in this case. The Appeals Board finds there is no evidence contained in the record that the services claimant's attorney and office staff performed were necessary to insure the respondent paid the medical bills submitted. As previously set forth, claimant settled her claim for workers compensation benefits pursuant to an Award agreed to by the parties and entered by the Administrative Law Judge on February 6, 1991. Included in the Award was a provision for respondent to provide future medical treatment to claimant for her injuries. The record in this case is void of any evidence that the respondent failed to comply with this provision of the Award. The Appeals Board concludes that the ministerial services itemized and provided by claimant's attorney were not necessary to insure the respondent complied with the order of the Administrative Law Judge or were otherwise required as a part of the attorney's representation of his client. Therefore, the Appeals Board finds claimant's request for reasonable attorney fees for services performed and expenses incurred by claimant's attorney is denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Floyd V. Palmer dated July 22, 1996, should be, and is hereby, reversed and claimant's request for payment of attorney fees and expenses to her attorney is denied.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Roy T. Artman, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director